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FIFTH DISTRICT COURT

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WASHINGTON COUNTY

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BY 

FIFTH JUDICIAL DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,
Plaintiff,

vs.

WARREN STEED JEFFS,
Defendant.

MEMORANDUM REGARDING
STATEMENTS BY SAM BARLOW

Criminal No. 061500526

Judge James L. Shumate

Following the August 20, 2007, evidentiary hearing on the Defendant's motion *in limine* regarding Richard Holm and Jethro Barlow, the Court asked the parties to brief legal issues involving statements by Sam Barlow. In response, the State respectfully submits the following memorandum.

Background

The State has an audio recording of the priesthood session of the April 2002 general conference of the FLDS Church. Warren Jeffs conducted the conference and introduced the speakers. As he introduced Sam Barlow, Warren Jeffs said:

Our Prophet and the Celestial Law, the principle of revelation are under attack. There is a combined effort - the State of Utah and the State of Arizona - to come against our

Prophet and this people - trying to stop the work of God. I'll call on Brother Sam Barlow to give this report with any instructions he feels impressed to give.

With that introduction from Warren Jeffs, Sam Barlow gave a report that included the following excerpts:

I have had the privilege of [speaking] to men in high places in the State of Arizona recently. Upon discovering that there was a combined effort by the Attorney General in the State of Arizona and the Attorney General in the State of Utah - their offices, and those working in their offices, to investigate and interfere with the principle of marriage by revelation.

They have taken this on in as a - under a - pretense that they are going to protect young women from being coerced or levered or pressured into a marriage union with men that are older than them.

...

I am trying to be careful because we're not - we're not talking about a civil lawsuit like we were a decade ago when they made an attack on the United Effort Plan to try to interfere with Uncle Rulon's work.

We are now talking about a criminal conduct - things that by statute they have now legislated purposely to bring us into collision with the judiciary and particularly to make Uncle Rulon collide with the judiciary. So we are talking about criminal things. And when you deal in criminal law you have to be careful because there's some ramifications to it.

If they can secure a conviction of somebody for this so called behavior - that they call sexual conduct with a minor - which if it were as they have had it described to them it would be - but in truth it is not.

...

Now then, the plan - so that you'll understand it - is to prove this activity by focusing on children. In other words, if a baby's born, then that baby become evidence. If a father and mother have registered the birth of that baby, it shows that age of the mother, who the father is, and that a baby was born. And the deduction is that there was some sort of sexual activity previous to that time. That's fairly good logic.

So then they put these women in this condition where they question them about that and they can't deny that the facts of the matter. And then they want to enter into a series of

questions on why. Why did you do this? Why is this so? And they want to entangle the mother and father of the girl for having given permission to that girl to enter into a religious covenant of marriage.

They have already constructed laws and made - passed - ordinances that make it unlawful for a mother or father to give permission for marriage and to make it so that the only way they can lawfully do that is to have the blessing and consent of a Superior Court Judge or a District Court Judge in the State of Utah.

If they can prove this, which they feel like their facts are such that they can, then they'd like to expand it into who's aiding and abetting the commission of this so called crime. And then they'd like to go after the religious leaders for facilitating it.

...

One of [our] attorneys said to me, if you don't make some concession on whether or not you will continue to marry young ladies to old men, then you'll be caught in the same net and trap and under the same pressure that John Taylor was at his time. And I said I'm aware of that. But we were born to this conflict and we will have to endure equal pressure to what the saints were under then . . .

...

What I'm saying is we don't - we shouldn't think that we're going to get through this - at a lesser price than our forefathers did. But we should stand faithful and should, and should have women that are as converted as we are.

Argument

Sam Barlow's statements are admissible against Warren Jeffs under Rule 801(d)(2) as "admissions of a party-opponent." In addition, because the statements are offered to show Warren Jeffs' knowledge and intent, they are not hearsay.

I. The Statements are Admissions of Warren Jeffs as a Party-Opponent

Under Rule 801(d)(2), "a statement is not hearsay if:

- (2) *Admission by a party-opponent.* The statement is offered against a party and is ... (B) a statement of which the party has manifested an adoption or belief in its truth; or (C) ***a statement by a person authorized by the party to make a statement concerning the subject***, or (D) a statement by the party's agent or servant concerning a matter within

the scope of the agency or employment, made during the existence of the relationship...”

(Emphasis added). Sam Barlow’s statements squarely fit the requirements of 801(d)(2)(C) because Warren Jeffs directed Sam Barlow to make his statements concerning the subject. Warren Jeff’s own words of introduction demonstrate that Sam Barlow was authorized by Warren Jeffs to make the “report” and give “instructions” regarding the “combined effort by” Utah and Arizona to attack “the Celestial law and the principle of revelation.” Sam Barlow then gave his report and instructions on the specific topic directed by Warren Jeffs. Following Sam Barlow’s report, Warren Jeffs did not renounce or disavow the statements in any way. Because Sam Barlow was authorized by Warren Jeffs to speak on the subject, Barlow’s statements constitute admissions by a party-opponent and are admissible under Rule 801(d)(2).

II. The Statements Are Admissible as Evidence of Warren Jeff’s Knowledge and Intent

In addition to constituting admissions, the statements are also admissible as non-hearsay. An out-of-court statement is hearsay only if it is “offered in evidence to prove the truth of the matter asserted.” Rule 801(c). According to Professors Kimball and Boyce, “[t]he definition of hearsay requires that the statement be offered for the truth of the matter asserted. This has been a traditional requirement. If a party offers a declaration whose significance is that something can be inferred from the fact that it is false *or simply that it was made*, it is not hearsay.” Utah Evidence Law, 8-278, Edward Kimball and Ronald Boyce (2nd Edition 2004) (emphasis added).

A variety of out-of-court statements are admissible when offered for reasons other than to prove their truth. *E.g., State v. Hayes*, 572 P.2d 368, 372 (Utah 1977) (no error to admit

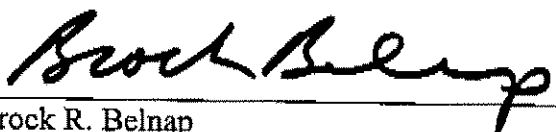
statements made in defendant's presence to show defendant's knowledge of facts stated); *United States v. Sheperd*, 739 F.2d 510, 514 (10th Cir. 1984) (no error to allow testimony about the giving of instructions because the instructions were not offered to prove the truth; an instruction is neither true nor false).

In this case, Sam Barlow's report is not offered to prove that the State of Utah was attacking underage marriages. Instead, the evidence is offered to show that Warren Jeffs *knew* and *intended* that sexual intercourse involving minors was contemplated within "the principle of marriage by revelation." One element the State must prove is that Warren Jeffs intended, knew, or was reckless regarding whether Elisa Wall engaged in sexual intercourse as part of her revealed marriage. The statements made at Warren Jeff's direction and in his presence make a fact of consequence – Warren Jeff's knowledge and intent regarding sexual intercourse – more probable than without the evidence. Rule 401.

CONCLUSION

Sam Barlow's statements are admissible under Rule 802(d) as admissions of a party opponent. Additionally, they are not hearsay because they are offered to show Warren Jeff's knowledge and intent.

Respectfully submitted this 28th day of August, 2007.


Brock R. Belnap
Washington County Attorney

CERTIFICATE OF DELIVERY

I hereby certify that, on the 28th day of August, 2007, I caused a true and correct copy of the foregoing MEMORANDUM REGARDING STATEMENTS BY SAM BARLOW to be served as follows:

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